



**CUNA & Affiliates**  
*A Member of the Credit Union System*

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January 18, 2006

Federal Communications Commission  
236 Massachusetts Ave., N.E.  
Suite 110  
Washington, D.C. 20002

Via E-mail: <http://www.regulations.gov>

Re: Rules and Regulations Implementing the Telephone Consumer Act of 1991 –  
Proposed Rule (CG Docket No. 05-338)

Dear Sir or Madam:

The Credit Union National Association (CUNA) is pleased to provide comments on the Federal Communications Commission's (Commission's) proposal to amend its rules to implement the requirements of the Junk Fax Prevention Act (Act). The Act allows organizations to continue to send unsolicited commercial faxes to customers, members, and vendors as long as they have an established business relationship (EBR) with those recipients. Faxes are also allowed when a new business relationship is established as long as the fax number was provided by the recipient or published in a directory, advertisement, or website. The Act requires fax recipients to be notified by a "clear and conspicuous" notice of their options -- via a free method -- for opting out of receiving commercial faxes on the first page of every fax. The Act also authorizes the Commission, after a period of three months from the date of enactment of the Act, to consider limits on the duration of an EBR. Finally, the Act grants the Commission the authority to allow professional or trade associations that are tax-exempt nonprofit organizations to send unsolicited fax advertisements to members "in furtherance of the association's tax-exempt purpose" that do not contain the opt-out notice otherwise required. By way of background, CUNA represents approximately 90% of the nation's 8,800 state and federal credit unions that serve nearly 87 million members.

#### **SUMMARY OF CUNA'S COMMENTS**

- CUNA commends the FCC for delaying the effective date of its rule requiring a sender of facsimile advertisements obtain prior written permission from the recipient as well as a rule placing time limitations on the EBR exception until the completion of this rulemaking.



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- We advocate the codification of the Act's provisions recognizing an EBR exemption.
- CUNA urges the Commission to use its authority to establish an exception to the opt-out notice requirement for certain associations. CUNA's faxes, for example, are used primarily to distribute information regarding the educational programs, resources and materials available from CUNA to our members.
- The exemption for certain associations is important since many many credit unions do not have the internal resources to comply with all of the expensive recordkeeping requirements do these activities and may have to employ third parties, thereby further hiking the compliance costs. These added operational burdens will take resources away from the central mission of associations – providing high-quality member service.

## DISCUSSION

Under a Commission rule, businesses and organizations (including CUNA, state credit union leagues and individual credit unions) would have been forced to obtain prior written consent before sending commercial faxes to members. The rule was originally slated to take effect on January 1, 2005, but the Commission granted a petition of stay that delayed implementation until July 1, 2005. A second petition of stay granted while the Act was under consideration by Congress delays implementation until January 9, 2006. In conjunction with the issuance of this proposal, the Commission has decided to further delay the effective date. The effective date is also delayed for the Commission's rule limiting the EBR exception to eighteen months after the recipient's last purchase or transaction, or three months after of the recipient's last application or inquiry (18/3-month time limitation). The effective date is stayed until the conclusion of the Commission's rulemaking. We certainly appreciate the actions to postpone those rules, which would be deleterious to CUNA, state credit union leagues, and individual credit unions.

We wholeheartedly agree with the provision in the proposal to modify the Commission's rules to expressly recognize an EBR exemption. We encourage the Commission not to impose any limits on the duration of an EBR. We believe that the 18/3-month limitation for telephone solicitations are appropriate and distinguishable because they are less intrusive than faxes. In particular, we strongly urge the Commission to use the authority granted by the Act to allow professional or trade associations that are tax-exempt nonprofit organizations to send unsolicited fax advertisements to their members in furtherance of the association's tax-exempt purpose that do not contain the "opt-out" notice. We do not believe that an opt-out notice is necessary to protect the ability of members of associations such as CUNA to stop the sending of any future unsolicited advertisements. We are geared to serve our state credit union leagues and credit union members; they routinely interact with CUNA staff and know how to contact CUNA. Once CUNA receives a request to take a name our of the fax database, we will do it expeditiously as part of our member/customer service.

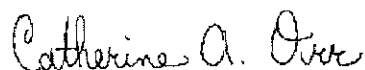
CUNA relies on fax communications with our affiliated state credit union leagues and member credit unions to provide them with the information and services that they have already expressed an interest in receiving when they made the decision to become members of CUNA. We believe that organizations such as trade associations use faxes for the routine conduct of daily business and do not constitute random "junk" or "blast" faxes to "drum up" business. In the case of CUNA, we fax our members (state credit union leagues and credit unions) information that they would expect in the routine course of business. We fax to them information on CUNA's offerings, including many educational materials covering meetings/conferences, Webinars, as well as legislative and regulatory updates.

Without the exemption, the Commission's rule would inflict paperwork burdens on associations by imposing time limits on the EBR exception. Under the proposal, the Commission is considering limits on the EBR, such as the 18/3-month time limitation in the rule that is currently stayed. This provision would require every U.S. business that sends faxes with advertising content, including tax-exempt nonprofit professional and trade associations, to keep detailed, continuously updated records of their customers' last inquiries and transactions. The Commission indicates in the proposal that even for EBR members/customers, "in the event a question arises about the existence of an EBR or the duration of the EBR, the sender might need to maintain records evidencing the EBR and when the EBR was formed. Such records might also need to demonstrate whether or not the facsimile number was in the sender's possession before the date of enactment of the Junk Fax Prevention Act." CUNA, state credit union leagues and any individual credit union affected by this rule will have to expend administrative expenses to obtain the necessary consents.

In the Supporting Statement to the proposal, the Commission estimates that the requirement to place opt-out notices on unsolicited faxes will require on average 1 hour per organizations plus 15 seconds per do-not-fax request to "scrub" the database of the relevant fax number. While we believe these numbers are low, it would still be burdensome to comply. These added operational costs will harm the economic condition of credit unions which will, in turn, hinder their ability to serve their members – which is their mission.

Thank you for the opportunity to comment. If you have any questions about this letter, please contact me by phone at (202) 508-6743 or by e-mail at [corr@cuna.com](mailto:corr@cuna.com).

Sincerely,



Catherine Orr  
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Credit Union National Association